



October 10, 2000

Ms. M. Suzy Ingle Rice, PC
Attorney and Counselor at Law
3900 Essex, Suite 1070
Houston, Texas 77027

OR2000-3892

Dear Ms. Rice:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 140357.

The Mills Branch Village Community Association (the "association"), a property owners' association which you represent, received a request for audit reports, results of board votes, and an invoice. You previously submitted a letter, dated July 17, 2000, requesting this office to determine whether the association was subject to the Public Information Act (the "Act"). In a letter dated July 27, 2000, this office determined that your request was not made pursuant to section 552.301 of the Government Code because the Act is only triggered when a governmental body receives a written request for information and you did not inform us that the association received a request for information. You now assert that the association received a request for information and have provided this office a copy of the request for information. You still claim that the association is not subject to the requirements of the Act. We have considered your arguments and those of the requestor. *See* Gov't Code § 552.304 (permitting a person to submit written comments to the attorney general).

Section 552.0035 of the Act states:

A property owners' association is subject to [the Act] in the same manner as a governmental body if:

- (1) membership in the property owners' association is mandatory for owners or for a defined class of owners of private real property in a defined geographic area in a county with a population of 2.8 million or more or in a county adjacent to a county with a population of 2.8 million or more;
- (2) the property owners' association has the power to make mandatory special assessments for capital improvements or mandatory regular assessments; and

(3) the amount of the mandatory special or regular assessments is or has ever been based in whole or in part on the value at which the state or a local governmental body assesses the property for purposes of ad valorem taxation under Section 20, Article VIII, Texas Constitution.

Therefore, a property owners' association is subject to the Act only if it meets all three of the enumerated requirements. You acknowledge, and we agree, that the association meets enumerated items (1) and (2). However, you assert that the association is not subject to the Act because the association does not meet item (3).

You have provided for our review the original Declaration of Covenants, Conditions and Restrictions for the association (the "declaration"). In relevant part, Article IV, section 3 of the declaration states that the "Until April 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment shall be (\$200.00) per Lot or Parcel; (\$140.00) per Apartment; and (\$2.00) per (100) square feet, or fraction thereof, of Commercial Land." Section 3(a) of the declaration provides that after April 1 of the year immediately following the conveyance of the first Lot to an owner, the maximum annual assessment shall be adjusted in conformance with the Consumer Price Index (the "CPI"). Thus, under the terms of the original declaration, the maximum annual regular assessment rate is based on a certain dollar value which is adjusted pursuant to the CPI and not "the value at which the state or a local governmental body assesses the property for purposes of ad valorem taxation under Section 20, Article VIII, Texas Constitution." Moreover, you represent to this office that the association does not now and never has based its mandatory special or regular assessments, in whole or in part, on the value at which the state or local governmental body assesses the property for purposes of ad valorem taxation.

However, the requestor claims that the amount of the assessment is based in part on the value at which the state or a local governmental body assesses the property because the association is assessed and pays ad valorem property taxes on community parks. However, we do not believe that the association's payment of ad valorem property taxes is the equivalent of the association basing its assessments on the values of the homeowners' ad valorem tax assessments. Based on your representations and our review of the declaration, we agree that the association does not meet the definition in section 552.0035(3) because we have no information to indicate that any special or regular assessment is now or has ever been "based in whole or in part on the value at which the state or a local governmental body assesses the property for purposes of ad valorem taxation." Therefore, we conclude that the association is not subject to the requirements of the Act.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the

governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

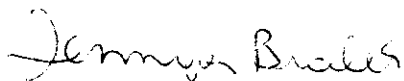
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Jennifer Bialek
Assistant Attorney General
Open Records Division

JHB\er

Ref: ID# 140357

cc: Mr. William T. Bailey, Ph. D., CPA
4010 Echo Mountain Drive
Kingwood, Texas 77345
(w/o enclosures)